

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SHARON MITCHELL

Plaintiff

v.

CITY OF PLANO; CITY OF YORKVILLE;
KENDALL COUNTY SHERIFFS OFFICE;
OFFICERS JOHN BEERY; ROBERT
HERNANDEZ; EMILY ANDERSON;
ANTHONY JOURTAS; SHAWN BARKS;
AARON SMITH; JONATHAN WHOWELL;
SCOTT HOGAN; TOM ROMANO, TRISH
HUTSON; SUSAN NELSON; UNKNOWN
KENDALL COUNTY SHERIFF OFFICE
EMPLOYEES; UNKNOWN KENDALL
COUNTY COURT EMPLOYEES;
UNKNOWN INDIVIDUALS TO BE NAMED
THROUGH DISCOVERY

Defendants

Court No. 16-cv-7227

Judge Edmond E. Chang

Jury Trial Demanded

**CITY OF PLANO DEFENDANTS' MOTION TO DISMISS
THE PLAINTIFF'S SECOND AMENDED COMPLAINT**

CITY OF PLANO; OFFICERS JOHN BEERY; ROBERT HERNANDEZ; EMILY ANDERSON; ANTHONY JOURTAS; SHAWN BARKS; AARON SMITH, JONATHAN WHOWELL; SCOTT HOGAN; and TOM ROMANO (hereinafter referred to as the "Plano Defendants"), by their attorneys ALISON HARRINGTON and SCOTT DOLEZAL of BEST, VANDERLAAN & HARRINGTON, and JANA BRADY AND AMEE LAKHANI of HEYL, ROYSTER, VOELKER & ALLEN, P.C., pursuant to Federal Rule of Civil Procedure 12(b), move to dismiss the Plaintiff's Second Amended Complaint. In further support thereof, the Plano Defendants submit as follows:

1. Plaintiff has filed a complaint against the Plano Defendants alleging the following counts:

Count I for deprivation of constitutional right to freedom of speech ; Count II for deprivation of equal protection; Count III for deprivation of due process; Count IV for deprivation of constitutional right of freedom from seizure of their bodily person; Count V for false light invasion of privacy; Count VI for defamation; Count VII for intentional infliction of emotional distress; Count IX for malicious prosecution; Count X for respondeat superior; and Count XI for indemnification.

2. Plaintiff's claims should be dismissed for the following reasons: 1) Plaintiff's claims are time barred; 2) the Plaintiff has not sufficiently alleged that any of the individually named defendants were personally involved in the alleged constitutional deprivations; 3) City of Plano cannot be held liable pursuant to the *Monell* Doctrine; 4) Plaintiff has failed to adequately allege that she was retaliated against for exercising her First Amendment rights; 5) Plaintiff lacks standing to bring defamation and false light claims and these claims have not been sufficiently alleged; 6) Plaintiff has not sufficiently pled false arrest, malicious prosecution, intentional infliction of emotional distress, equal protection or due process claims; 7) Plano Defendants are immune from liability arising from Plaintiff's state claims in Counts V, VI, VII and IX pursuant to the Illinois Tort Immunity Act. 745 ILCS 10/1-101 et seq.; and 8) the Plaintiff is not entitled to relief from the City of Plano under a respondeat superior or indemnification theory.

3. In further support of this motion, the Defendants have contemporaneously filed their memorandum of law in support of their motion to dismiss the Second Amended Complaint.

WHEREFORE, Defendants, PLANO POLICE DEPARTMENT; CITY OF PLANO; PLANO CITY ZONING AND ENFORCEMENT; OFFICERS JOHY BEERY; ROBERT HERNANDEZ; ANTHONY JOURTAS; SHAWN BARKS; AARON SMITH, LT. WHOWELL

and TOM ROMANO pray that this Court dismiss Plaintiff's Second Amended Complaint with prejudice pursuant to FRCP 12(b)(6) and for any other relief deemed reasonable.

Respectfully submitted,

By: /s/ Alison Harrington
One of their attorneys

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CERTIFICATE OF SERVICE

I, the undersigned, state that I caused copies of the foregoing to be served, with enclosures referred to thereon, if any, by **electronic filing via CM/ECF** to the attorney(s) of record at the address(es) from 25 E. Washington, Suite 800, Chicago, IL 60602 prior to 5:00 p.m. on January 10, 2018.

/s/ Alison Harrington